SHER TREMONTE LLP

September 13, 2016

BY ECF

The Honorable P. Kevin Castel
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *United States v. Gary Hirst*, 15 Cr. 643 (PKC)

Dear Judge Castel:

On behalf of our client, Gary Hirst, we write to the Court regarding an issue that came up today at trial. Following the direct testimony of Arthur Laby, we requested a limiting instruction that Mr. Hirst was neither an investment adviser nor a registered investment adviser. The Court then gave the following instruction:

> Ladies and gentlemen, I instruct you that there is no issue in this case that Mr. Hirst is not an investment adviser, registered or otherwise. So there is no contention and no dispute that he is not an investment adviser.

Trial Tr. 206:2-6, attached hereto as Exhibit A.

Upon review of the transcript, we are concerned that the use of the double negative may have been confusing to the jury and led them to conclude, erroneously, that Mr. Hirst *was* an investment adviser. We accordingly respectfully request an additional instruction on this matter.

Respectfully submitted,

/s/
Michael Tremonte
Justine A. Harris
Noam Biale

Counsel for Gary Hirst

Exhibit A

(At the sidebar)

MR. TREMONTE: This seemed like an appropriate time to bring up an issue that we had raised in one of our in limine motions. We would seek a limiting instruction from your Honor that Mr. Hirst is not an investment adviser. Simple as that.

THE COURT: There is no dispute in this case on that.

MR. BLAIS: No.

THE COURT: I will be happy to give that. He is not a registered investment adviser?

MR. TREMONTE: Neither an investment adviser nor a registered investment adviser.

(Continued on next page)

(In open court)

THE COURT: Ladies and gentlemen, I instruct you that there is no issue in this case that Mr. Hirst is not an investment adviser, registered or otherwise. So there is no contention and there is no dispute that he is not an investment adviser.

MARSHALL MANLEY,

called as a witness by the government,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: State your name and spell it for the record, please.

THE WITNESS: Marshall, M-A-R-S-H-A-L-L, Manley, M-A-N-L-E-Y.

DIRECT EXAMINATION

BY MS. HECTOR:

Q. Good afternoon, Mr. Manley.
A. Good afternoon.
Q. How old are you?
A. 76.
Q. Are you married?
A. Yes.
Q. Where do you live?
A. Florida.
Q. I'm sorry?
A. Florida.